indicating an intention that all the children should take, should logically be construed in the same way. The result would be the practical abrogation of the common-law rule as regards class limitations. Fortunately, however, the above cases have been limited to their facts. *Symes* v. *Symes,* L. R. [1896] 1 Ch. 272.

A more startling departure from the old rule is the case of *Battie-Wrightson* v. *Thomas,* L. R. [1904] 2 Ch. 95; cf. 5 COLUMBIA LAW REVIEW 167. A testator by codicil directed that no devisee under his will should have a vested interest until the attainment of the age of 24 years. This was held to create executory interests, because the limitations were not intended necessarily to take effect on the termination of the prior estate. The case can only be upheld by viewing intention as capable of overriding the common-law rule. It may well be argued that the result of the Contingent Remainder Acts are here attained without legislation. Prof. Kales, 21 Law Quar. Rev. 118. A recent case, however, *White* v. *Summers, supra,* limits this case also to its facts. The limitation in the principal case was to the first son who "shall attain, or have attained 21 years," words far more emphatic than those of the preceding case, and apparently the same in meaning as those in *Lechmere* v. *Lloyd, supra. Battie-Wrightson* v. *Thomas, supra,* is distinguished, though unjustifiably, on the ground that alternative limitations were created. Intention, which seems to be the fundamental basis of all the other cases, is entirely discredited by the court as a test for the applicability of the rule. This, it is submitted, is the sound view at common law. If legislation was necessary in the beginning to save contingent remainders, it is not for the courts to extend it to wills specifically excepted by the statute.

ADMIRALTY JURISDICTION AND THE BRINGING IN OF THIRD PARTIES.—The difficulties experienced by the Supreme Court in admiralty causes are attributable to the indefiniteness of the clause, "the judicial power shall extend * * * to all cases of admiralty and maritime jurisdiction." The practice of the English courts at the time of the adoption of the Constitution was early disregarded as a test, *The Vengeance* (1796) 3 Dall. 297, and the jurisdiction exercised by the Colonial and State courts prior to the Constitution declared determinative. *Waring* v. *Clark* (1847) 5 How. 441. Yet, apparently, by the use of both terms "admiralty" and "maritime," the broadest possible grant of jurisdiction was intended. Benedict, Adm. § 188. The words are not synonymous, *The Sandwich* (1806) 1 Pet. Adm. 233n, 234, maritime cases meaning such as are so considered by the maritime law of nations. Benedict, Adm. 40, 41; and see *The Seneca* (1824) Fed. Cases 12670; *De Lovio* v. *Boit* (1815) 2 Gall. 398, 472; *Hale* v. *Ins. Co.* (1842) 2 Story 176, 183. As to jurisdiction, it is submitted that the Supreme Court has practically accepted the general maritime law as a guide. Benedict, Adm. § 162. The adoption of the "nature of the contract" test for contracts, *Ins. Co.* v. *Dunham* (1870) 11 Wall. 1, and the extension of the locality test to include injuries by a vessel to an aid to navigation firmly affixed to the land, point to this conclusion. *The Blackheath* (1904) 195 U. S. 361. Some of the hampering decisions of early judges influenced by the English view of jurisdiction, *The General Smith* (1819) 4 Wheat. 438; cf. *The*

Canal Boat Kate Tremaïne (1871) 5 Bene. 60; *Ferry Co.* v. *Beers* (1857) 20 How. 393; cf. *Consulat de la Mer,* Ch. 32, have been sustained on the doctrine of *stare decisis, The Lottawanna* (1874) 21 Wall. 558, yet many have been wisely overruled. *The Eagle* (1868) 8 Wall. 15.

After jurisdiction has been acquired, the consistent application of the principles of the maritime law has been hindered by the common law training of judges sitting in admiralty. For example, the common law doctrine of principal and agent was responsible for the rule that a boat under tow is not liable for a tort if it had no control over the towing vessel. *Sturgis* v. *Boyer* (1860) 24 How. 101; cf. *The Doris Eckhoff* (1887) 32 Fed. 555; *The China* (1868) 7 Wall. 63, 68. The common law of express contracts caused the refusal to view unenforcible exorbitant contracts of salvage. *The Elfrida* (1898) 172 U. S. 186. There is, however, a tendency to look to the maritime law. For example, a municipal corporation acting as an agent of the State is liable for the negligence of its agents. *Workman* v. *New York* (1900) 179 U. S. 552. In *The Harrisburg* (1886) 119 U. S. 199, the Supreme Court clearly intimated that if a cause of action for death by wrongful act were given by the maritime law, it would be granted by the federal courts. For other instances in which the maritime law has been considered authoritative, see *The J. E. Rumbell* (1893) 148 U. S. 1; *The Max Morris* (1890) 137 U. S. 1; *Mutual Safety Ins. Co.* v. *Cargo of The George* (1845) Fed. Cas. 9981.

In a recent case, *Evans* v. *New York, etc., S. S. Co.* (1908) 163 Fed. 405, a libellant had an action in admiralty against a steamship company which in turn had an action at common law only against a warehouseman. Asserting that the warehouseman might be petitioned in under Supreme Court Rule 59, because of his liability over, and viewing it as immaterial that such liability was not maritime, the court allowed his joinder as respondent. In all previous applications of this Rule, except in *Salisbury* v. *70,000 Feet of Lumber* (1895) 68 Fed. 916, there was a maritime cause of action against the third party. *The City of Lincoln* (1885) 25 Fed. 835; *The Alert* (1889) 40 Fed. 836. Under the Colonial or English practice there is no precedent for the principal case. Roscoe, Adm. Prac. (3rd Ed.) 321. It has been said that admiralty will give incidental relief though it passes upon a claim over which it could not have taken original jurisdiction, Benedict, Adm. 17; *The Epsilon* (1873) 6 Bene. 378; but see *ex parte Phenix Ins. Co.* (1886) 118 U. S. 610, but the authorities relied upon support no such proposition. When a tort cognizable in admiralty is consummated partly on land and partly on water, compensation is given for injuries sustained on land. *Am. Ins. Co.* v. *Johnson* (1827) 1 Blatch. & H. 9. There is, however, but one cause of action, which is maritime, and such compensation is given by way of damages only. Moreover if a contract for services is divisible, admiralty enforces only that part which is maritime. *The Pacific S. S. Co.* v. *Ferguson* (1896) 76 Fed. 893; *The Richard Winslow* (1896) 71 Fed. 426. When mortgagees and other lien holders proceed against funds in court, admiralty is determining the owner and in no sense permitting the prosecution of an action over which it has no jurisdiction. *The Lottawanna* (1873) 20 Wall. 201. The general maritime law must be examined for precedent, not only because that law should be deemed authoritative, but also because Rule 59, having its origin in that law, *The*

Hudson (1883) 15 Fed. 162, should be interpreted in its light. The law of continental Europe, claiming jurisdiction only over causes relating to the sea, Zouch, Adm. 24-38, gives no support to the principal case. Where third parties are proceeded against the cause has always been such as is originally cognizable by a maritime court. *Navire "Gyptis"* (1887) 2 *Revue Inter. du Droit Mar. 664.*

It is not improbable, however, that the higher courts, influenced by equitable procedure, where third parties are frequently brought in, though originally not liable in equity, may affirm the decision. It is sometimes said that admiralty acts as a court of equity. This statement, however, is untrue, for an admiralty court has none of the essential characteristics of an equity court. *The Phoebus* (1837) 11 Pet. 175; *Grant* v. *Poillon* (1857) 20 How. 162. Even where jurisdiction is obtained, admiralty refuses to pass upon questions peculiarly within the Chancellor's jurisdiction, e. g., the reformation of a contract. *Myer* v. *Pac. Mail S. S. Co.* (1893) 58 Fed. 922. Admiralty recognizes principles similar to those of equity, e. g., the doctrine of unclean hands. *Am. Ins. Co.* v. *Johnson, supra.* The refusal to enforce stale liens is analogous to the theory of laches. *The Nebraska* (1895) 69 Fed. 1009. These conceptions, however, are inherent in the maritime law and were not extracted from equity jurisprudence. Benedict, Adm. § 329. Though from the standpoint of avoiding circuity of action and of saving expense to the original respondent, who otherwise must bring a new suit on his common law claim, the rule of the principal case might seem desirable, such equitable considerations should not be invoked to effect an extension of jurisdiction unknown to the maritime law, to the courts of England or the Colonies.

PERSONAL COMMUNICATIONS WITHIN SECTION 829 OF THE NEW YORK CODE.—Section 829 of the New York Code of Civil Procedure provides for the disqualification of an interested party from testifying against an executor, etc., concerning a personal communication or transaction with the decedent. In defining a personal transaction or communication, the Court of Appeals has not been consistent. The tendency of the earlier cases was to restrict the terms; an interested witness could testify to a conversation between the decedent and a third party in which he participated, provided his testimony was restricted to what passed between the other two parties to the transaction. *Cary* v. *White* (1874) 59 N. Y. 336. Soon after, a witness was disqualified from testifying to a conversation in which he was included in the slightest manner by word or gesture. *Bragne* v. *Lord* (1876) 67 N. Y. 495. Finally, any words uttered in the presence of a witness were held to be communications to him. *Matter of Eysamen* (1889) 113 N. Y. 62; *Matter of Dunham* (1890) 121 N. Y. 575; *Matter of Bernsee* (1894) 141 N. Y. 389. Yet recently, in the case of *Hutton* v. *Smith* (1903) 175 N. Y. 375, the Court of Appeals reverted to the test in *Bragne* v. *Lord.* This test is uncertain, and objectionable because of the difficulty in determining, before cross-examination, what part the witness played. There would seem to be only two definitions of a personal communication which afford a definite test: (1) a communication directly with the decedent in which the witness took an active, and not a merely passive part;